The Solicitors' Journal

VOL. LXXXIV. **Saturday, May 4, 1940.** No. 18

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1853.

SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.

Annual Subscription: £2 12s., *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 1d. *post free.*

CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.

ADVERTISEMENTS: Advertisements must be received not later than 1 p.m. Thursday, and be addressed to The Manager at the above address.

Current Topics.

Paper Economy.

THE proprietors of this journal have recently been much concerned how best to meet the national demand for economy in paper without unduly restricting the regular amount of matter provided for its readers. After careful consideration it has been decided that, in fairness to reader, contributor, compositor and all the other necessary participants in the production, the method calculated to impose the least sacrifice is to adopt a smaller type. With the new type proposed roughly a 25 per cent. economy in space can be achieved, entailing no substantial reduction in actual matter. The change-over will take place as soon as practicable, and it is hoped to begin production in the new form immediately after Whitsuntide. Whilst it cannot be denied that the proposed change may result in seriously altering the appearance of the journal and rendering it less attractive and easy to read, it is hoped that our readers will accept the alteration as a well-intended war-time measure, and that the opportunity to revert to the original style will not be long postponed. Notwithstanding the additional burden imposed by the increase in postal rates now in force, the proprietors hope to be able to continue the paper at the existing rates of subscription, but would remind subscribers who make use of the "Points in Practice" department, and contributors who desire the return of unaccepted articles, to include for return by post addressed envelopes sufficiently stamped at the new rates, and to pardon the discontinuance henceforth of formal acknowledgments.

Serjeant-at-Arms.

THE office of Deputy Serjeant-at-Arms, from which Mr. WALTER H. ERSKINE has just retired after forty years' service in the House of Commons, had at one time an interest, especially for members of the legal profession, in that it was one of the duties of the holder of the office to see that the lawyer members of the House of Commons duly attended the House—a duty which, it was hinted, those gentlemen were inclined to shirk when their parliamentary functions clashed with their professional engagements. It is told us that in the reign of Elizabeth the Serjeant-at-Arms or his Deputy was accustomed to go regularly with the mace into Westminster Hall to summon them to give their attendance; while in the following reign this functionary made the round of the law courts and brought with him those lawyers who persisted in making their parliamentary duties subservient to their professional engagements. As late as 1764 such orders were accustomed to be made, but thereafter new influences began to be at work which ensured for the administration a full attendance of its supporters on all critical occasions. Nowadays the Serjeant-at-Arms' functions are more of a ceremonial character, but in comparatively recent time ANSON tells us that refusal to attend a Committee has been treated as a contempt and the offending member has been placed in the custody of the Serjeant-at-Arms.

Limitation of Dividends.

IN his reply to a debate on the Budget resolution, Sir JOHN SIMON gave further particulars of the contents of the forthcoming Limitation of Dividends Bill. The standard period by reference to which an existing company would be obliged to regulate its annual distribution under the measure would be any period for which the accounts of the company were made out ending after 30th June, 1936, and before 1st July, 1939. Within that period there would be three occasions on which the company would have made up its accounts, and it must take whichever one it thought best. A company, it was indicated, would be entitled to distribute either (*a*) an amount equal to the amount distributed by way of ordinary dividend on paid-up capital in any one of those three periods, or (*b*) an amount equal to the interest for the standard period at the rate of 4 per cent. on the paid-up ordinary capital at the end of the period, whichever was the greater. The Chancellor of the Exchequer went on to explain what he meant by "a minimum of 4 per cent." Assuming that a company made a profit adequate to justify it in distributing a dividend, then such company would be entitled as a minimum to distribute 4 per cent. But if it had in any of the three previous periods distributed more than 4 per cent., then it might continue to distribute at the same rate as before. It was in that sense that 4 per cent. had been described as the minimum. Provision would be made in the Bill for new companies and for cases in which the capital of the company had increased since the standard period. There might be cases where there were exceptional circumstances which might justify a demand for a higher dividend than would be possible under the general rule, and the company would be

able to apply to the Treasury for an increase if there were such exceptional circumstances. "Dividend" meant the gross rate, not the net amount received after the deduction of tax, and dividends paid free of tax would be "grossed up." It was indicated that the provision to prevent the creation of bonus is ancillary to those above described. The proposed Act would be defeated if bonus shares could still be created. The Chancellor of the Exchequer said that he would be willing to see the measure applied to private companies. He had no objection to that in principle. The difficulty was very largely due to the constitutional nature of the private company.

Divorce for Insanity: Medical Superintendent's Fee.

In a recent undefended petition for divorce before Sir Boyd Merriman, P., brought on the ground of the respondent's incurable insanity within the meaning of s. 2 of the Matrimonial Causes Act, 1937, the medical superintendent of a mental hospital stated in answer to a question put to him by counsel for the petitioner that his fee for attending was thirty guineas, and that that was the fee which he had been paid in a previous case in the Divorce Court. According to the note in *The Times*, the learned President said that he would be very much surprised to hear that other medical superintendents who gave evidence there were charging anything like that figure. His lordship did not feel in a position to express any further opinion on the matter, but he observed that those things were subject to taxation by officials of the court whose business it was to assess the proper figure.

National Service (Armed Forces) Act: Articled Clerk.

The selected decisions given by the umpire in respect of applications for postponement of liability to be called up for service in the armed forces of the Crown during February, 1940 (N.S. Code 2, Pamphlet No. 2/40, H.M. Stationery Office, price 4d. net), contain the case of an articled clerk to a firm of solicitors. The substantial question was whether the applicant was a full-time or part-time student. In the former event he would have been studying for the final examination to be held by The Law Society in June, 1940, for a year (Decision 1/40 (N.S.)); but in the latter it was open to argument whether he had been studying for the examination for the two years mentioned in Decision 13/40 (N.S.). The umpire decided that the applicant was a full-time student. In articles of clerkship to solicitors there was always (the umpire was informed) a clause to the effect that the solicitor would teach and instruct the articled clerk in the practice and profession of a solicitor. During the hours when the solicitor's office was open the clerk was doing work which might be of use to the solicitor, and he did his reading for his examination in the evenings or at other times when he was not at the office. But the work which the articled clerk performed at the office was of substantial benefit to himself as preparation for his examination, especially when the solicitor observed the undertaking given in the articles of clerkship to "teach and instruct," as he must be assumed to do. Accordingly the clerk was studying for his examination, not only during such time as he was reading legal books outside office hours, but also when engaged on legal work at the office of the solicitor to whom he was articled. Decision 1/40 (N.S.) was therefore applicable to the case. The applicant might be granted a postponement certificate for a period of six months from the date of the application, and was entitled to apply for an extension of the certificate (S.R. & O., 1939, No. 1120, Reg. 14 (3)).

Interest under the Compensation (Defence) Act, 1939.

This Act, which deals with compensation for the exercise of the prerogative and of emergency powers, provides for the payment of interest on the compensation which the subject is entitled to claim. The rate was originally fixed at 4 per cent. (S.R. & O., 1939, No. 1297), but this was reduced to 2 per cent. as from 1st February, 1940 (S.R. & O., 1940, No. 107). The Act provides that the authorities shall not be required to make payments in respect of the requisition of land at intervals of less than three months (s. 2 (2)) or, in the case of chattels, at intervals of less than one month (s. 4 (2)). But it also specifically provides in each case that the compensation shall accrue due from day to day (*ib.*), and when one turns to s. 10 it appears that interest is to run not from the date when payment becomes due but from the date on which the amount accrued. In other words, the compensation is to be apportioned from day to day, and each daily item will carry interest from that day until the date of payment.

Rules and Orders: Papermaking Materials (Charges).

On 25th April the House of Commons approved by resolution the Papermaking Materials (Charges) (No. 1) Order, 1940, made by the Treasury under s. 2 of the Emergency Powers (Defence) Act, 1939. Colonel Llewellin, the Parliamentary Secretary to the Ministry of Supply, explained that the object of the Order was to ensure that there was fair dealing between those who used the raw materials for papermaking. It was recalled that at the beginning of the war there was requisitioning of stocks of papermaking materials in the hands of manufacturers who obtained them at a much cheaper price than had reigned since. It had again been necessary to increase the price of such articles, and the time had come when it was necessary to even out once again between those who had stocks and those who had not. The Order dealt with the matter by imposing a levy on the stocks that were held in the hands of manufacturers of paper, so as to put them on an equal footing with those who had not stocks. It was indicated that the Order required an affirmative resolution of the House because it imposed a levy.

Recent Decisions.

In *Smith* v. *Smith* (*otherwise Hand*) (*by her Guardian*) (*The Times*, 25th April) Sir Boyd Merriman, P., held that where the respondent at the time of the marriage ceremony was subject to recurrent fits of insanity, though not at the time of the ceremony suffering from a fit of insanity in the dictionary sense of that term, the three provisoes to s. 7 (i) (*b*) of the Matrimonial Causes Act, 1937—ignorance at the time of the facts alleged, institution of proceedings within a year, and absence of marital intercourse since discovery—being satisfied, the petitioner was entitled under the Act to a decree *nisi* of nullity. This is the first suit to be brought by virtue of the above-cited paragraph.

In *The Australia Star* (*The Times*, 26th April) Bucknill, J., held that shipowners were not liable to owners of the cargo which had become tainted on the voyage owing to leakage of Diesel oil from the tanks, because, although the ship was not seaworthy at the beginning of the voyage, the defendants had established that they had exercised due diligence to make her seaworthy and fit and safe for the reception and carriage of the cargo.

In *Commissioners of Church Temporalities in Wales* v. *Representative Body of the Church in Wales and Another* (*The Times*, 27th April) the Court of Appeal (Sir Wilfrid Greene, M.R., and MacKinnon and Clauson, L.JJ.), reversing a decision of Morton, J., held that on the construction of s. 28 of the Welsh Church Act, 1914, the liability to repair the chancel of a parish church in Wales, which had formerly attached to the ownership of the tithe rent charge belonging to the rectory, fell immediately before 2nd October, 1936, on the Representative Body of the Church in Wales as the owners of the church, and that the plaintiffs could not be regarded as "lay impropriators" of the tithe rent-charge and were not liable to carry out repairs to the chancel.

Employers' Liability Act and Common Law Actions.

An interesting question was raised by the defendants in an action which came before Macnaghten, J. (15th, 18th April), whether the plaintiff, having recovered a sum of money in proceedings under the Employers' Liability Act, 1880, was debarred from prosecuting an action already commenced by him at common law and arising out of the same matter.

The plaintiff, a labourer, was injured by the fall of some steel plates which he was loading on to a truck while in the service of the defendants. By a writ issued out of the King's Bench Division in October, 1938, he brought an action at common law against his employers, the defendants, for damages for personal injuries caused by the alleged negligence of the defendants' servant or servants at the defendants' works.

In February, 1939, the plaintiff's solicitors were informed that the defence in the High Court was going to be amended by a plea of common employment and to safeguard the position an action was brought in the Edmonton County Court under the Employers' Liability Act, 1880, the particulars of claim being identical with the statement of claim in the High Court. In the county court the defendants denied liability and paid into court the sum of £468, the maximum amount which the plaintiff could recover in that court, and the plaintiff took that money out, as he was entitled to do under the rules, in satisfaction of his claim. Thereupon the defendants remedied their defence in the High Court action as follows: "Defendants will contest that by reason of the premises the plaintiff is debarred from recovering any further sum in this action."

The issue raised by the defence came before Macnaghten, J., in a special paper.

On behalf of the plaintiff it was submitted that the cause of action under the Employers' Liability Act was a different cause of action, and it was pointed out that that Act contained no special provision as contained in the Workmen's Compensation Act to the effect that a workman who has recovered under that Act cannot pursue an action at common law.

On behalf of the defendants it was submitted that an action under the Employers' Liability Act is an action based on negligence and nothing else, and that the Employers' Liability Act confers no new cause of action at all.

Although many cases were cited by counsel, his lordship found that there was no authority which dealt expressly with the point.

In the course of his judgment his lordship referred to the five events set out in s. 1 of the Employers' Liability Act, 1880, in which a workman may claim damages under that Act, and in any one of which events, in the words of the section, the workman "shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of or in the service of the employer nor engaged in his work." The sole effect of that section was to exclude the defence of common employment in any of the five events referred to, on the fiction that the workman was not in fact a workman in the employment of the employer.

His lordship then referred to the judgment of Bowen, L.J., in *Thomas* v. *Quartermain*, 18 Q.B., at p. 691: "With certain exceptions, the Act has placed a workman in a position as advantageous as but no better than that of the rest of the world who use the master's premises at his invitation or business."

His lordship said that it was clear that there was nothing in the Employers' Liability Act to confer any different cause of action on the injured workman than that which he would have had at common law and, therefore, the plaintiff having recovered under the Employers' Liability Act was debarred from recovering further.

Estate Agents and Commission.

In *Way & Waller, Ltd.* v. *Verrall*, 83 Sol. J. 675; 161 L.T. 86, Singleton, J., had before him yet another case in which an estate agent complained that, after he had been instrumental in finding a purchaser for a certain property, the owner refused to complete the transaction, with the result that the agent was deprived of the opportunity of earning his commission.

In that case the plaintiff estate agents had introduced to the defendant a prospective purchaser for the defendant's property at £6,650, a price acceptable to the defendant. Then, at a time when the prospective purchaser had been guilty of no undue delay and when it was certain that the transaction would, apart from anything which the vendor might do, be completed, the vendor terminated the negotiations and sold the property for £6,650 to a purchaser with whom he had previously been in negotiation, although, in that case also, he had, at the time, terminated the negotiations. The plaintiffs accordingly sued the defendant for £157 5s. commission, alternatively for damages for breach of contract, the breach which they set up being of an implied condition in the contract of agency that the defendant would do nothing to prevent the plaintiffs, after their work was completed, from earning their commission. Singleton, J., found as a fact that the defendant's reason for terminating the negotiations with the plaintiffs' client was that he feared that he was under liability, legal or moral, to pay to other estate agents commission in respect of the negotiations which he had earlier broken off with the person who became the ultimate purchaser; he wished to avoid the possibility of having to pay double commission. On that finding, and on a consideration of the authorities, Singleton, J., held that the plaintiff estate agents were entitled to succeed in their action. As he several times stated, however, he gave his decision not without hesitation. His interesting review of the cases seems to show clearly that his decision is in accordance with authority; but it also reveals a divergence of judicial opinion which makes a final pronouncement desirable. Singleton, J., was not, it would seem, in doubt about the merits of the particular case before him, but, in the course of his judgment, he made the following significant observation: "many have thought that there has been a little too much readiness to imply terms into a contract of this kind, and that the cases in favour of agents have gone quite a long way."

In viewing this problem generally, it is important first to realise that the legal relationship between the intending vendor and his agent is quite independent of that between intending vendor and intending purchaser. It appears that the intending vendor may have become legally liable to pay commission to the agent when he is not yet legally bound to sell the property to the intending purchaser. As Greer, L.J., said in *Trollope & Sons* v. *Martyn Brothers*, 78 Sol. J. 568; [1934] 2 K.B. 436, at p. 450: "When the" [prospective purchaser] "assented to the terms of contract sent by the vendor's solicitors, and on behalf of the buyer indicated the latter's acceptance of those terms, the plaintiffs had completed the work they had undertaken to do, though the vendor might still have been free to refuse to sign the contract, without any liability on his part to the proposed purchaser."

From the common-sense, or ordinary business, point of view, it may seem strange that an owner of property should be bound *vis-à-vis* his agent to go through with a sale while *vis-à-vis* the intending purchaser he is still free to sell elsewhere; it may be thought that the agent can hardly be in a stronger position than the purchaser, and that a change of mind in either party to the proposed sale right up to the last possible moment is no more than a risk ordinarily incidental to an estate agent's business. It was such reflections, perhaps, that made Singleton, J., at more than one point in the trial of *Way & Waller, Ltd.* v. *Verrall*, *supra*, remark that the case was one of difficulty, and which made him say that,

although there was authority for him to follow, the law on this subject was in need of greater definition.

The two views are thus contrasted by Scrutton, L.J., dissenting, in *Trollope & Sons* v. *Martyn Brothers*, *supra* [1934] 2 K.B., at p. 444 : " Maugham, L.J., takes the view, as I understand his judgment, that, although the implied term that the employer must not ' prevent ' the agent from earning his commission is too wide, it is ' necessary ' to imply a term " (i.e., into the contract of agency) " that the employer shall not ' without just cause ' prevent the agent from earning his commission, and as a corollary that if he ' arbitrarily ' (by which phrase I understand him to mean ' without alleging any just excuse ') refuses to sell, he is in default, though in an agreement subject to contract he breaks no contract with the purchaser by refusing to complete without giving any reason. I cannot agree with this view, which seems to make the subsidiary matter, the remuneration of the agent who is to obtain a contract of sale, as of more importance than the sale itself, which, without breach of any contract with the purchaser, has not been completed or materialised. It does not seem to me that a vendor taking an attitude towards the purchaser which by his contract he is entitled to adopt, if he gives no reason why he so acts except that it is in the bond, is acting arbitrarily and therefore in some unspecified default. Every man who receives and refuses without giving a reason an offer which he is not bound to accept, may be said to act arbitrarily, but I cannot understand why he is in default."

In *Trollope & Sons* v. *Martyn Brothers*, *supra*, the authority which, in the result, Singleton, J., felt bound to apply in *Way and Waller, Ltd.* v. *Verrall*, *supra*, the defendants instructed the plaintiff estate agents to find a purchaser for a certain property. The plaintiffs, having introduced a purchaser, wrote to the defendants confirming the latter's acceptance of the purchaser's offer and adding that " in the event of the sale materialising we shall look to you for payment of the usual scale commission." The defendants in their reply wrote that they would pay the plaintiffs commission " in the event of this sale being satisfactorily completed." The purchaser having signed an engrossment of the contract, the defendants then refused to proceed with the transaction. The plaintiffs accordingly, as in *Way & Waller, Ltd.* v. *Verrall*, *supra*, claimed commission or damages for breach of contract. Greer, L.J., after making it clear that the vendor's liability to the plaintiff agents was a matter quite independent of his legal relationship with the prospective purchaser, reviewed the authorities which established that an agent is entitled to his commission when he has performed his part of the contract under which he is employed. That principle, Greer, L.J., points out, was applied in *Inchbald* v. *Western Neilgherry Coffee, &c., Co.* (1864), 17 C.B. (N.S.) 733, to a case in which the plaintiff agent had, if through the defendants' fault, yet not done the work which he had been employed to do ; and in *Fisher* v. *Drewett* (1878), 48 L.J.Q.B. 32, where an agent was held " entitled to his commission . . . as it was owing to the defendant's own default that he never received the sum, and the plaintiff had performed all his part of the contract." The foundation of Greer, L.J.'s decision is that there was, in his opinion, an implied undertaking by the vendors that they would not, after the plaintiffs' work was completed, deprive them of the fruits of their labour by refusing without just cause to complete the transaction on the terms to which they had asked the plaintiffs' customer to consent.

Maugham, L.J.'s judgment proceeds on similar lines. He distinguishes *Peacock* v. *Freeman* (1887), 4 T.L.R. 541, where an auctioneer was held not entitled to his commission, on the ground that it was a case " in which there was a just excuse for a step which prevented the agent from earning his commission." Scrutton, L.J., however, said [1934] 2 K.B., at p. 445, that that case, with others of the Court of Appeal, seemed to him either to support, or not to contradict, the view which he had taken.

The decision in *Trollope & Sons* v. *Caplan* [1936] 2 K.B. 382, was against the agent, because it was not proved whether or not it was certain or highly probable that there would be complete agreement between vendor and prospective purchaser.

In *Keppel* v. *Wheeler* [1927] 1 K.B. 577, it was decided that an estate agent remains under a duty, even after he has procured an offer for property which his principal, the vendor, accepts subject to contract, to communicate to the principal any higher offer made for the property. Bankes, L.J., who delivered the leading judgment of the Court of Appeal, gave, by way of illustrating that the agent's duty did not cease on the day when the vendor gave authority to close with the purchaser's offer, three instances of what might have occurred after that day : He said that the agents would not have been entitled to commission if (*a*) the prospective purchaser changed his mind ; (*b*) the vendor found a purchaser more desirable or prepared to pay more ; or (*c*) another agent (there being no sole agency in that case) found such a purchaser. Bankes, L.J., considered those three possibilities to show both that the agent's duty still continued after acceptance of the offer subject to contract *and* that the agent was not yet entitled to commission. The latter point was not under consideration, and to that extent, therefore, Bankes, L.J.'s observations were *obiter*. Singleton, J., concluded, from observations of Greer, L.J., in *Trollope & Sons* v. *Martyn Brothers*, *supra*, that that dictum of Bankes, L.J., was open to question, but was careful to point out that Greer, L.J., does not say so expressly. Horridge, J., in *Musson* v. *Morley*, 80 SOL. J. 128, does not deal with Bankes, L.J.'s dictum beyond making it clear that it was *obiter*.

In *Cooper* v. *Luxor* (*Eastbourne*), *Ltd.* (1940), 84 SOL. J. 95, the Court of Appeal again had before them a claim by an estate agent for commission. Counsel for the defendants formally submitted that *Trollope & Sons* v. *Martyn Brothers*, *supra*, was wrongly decided, but the court were, of course, bound by it. They held that the defendants had had no reasonable excuse for withdrawing from the sale, and that the plaintiff was accordingly entitled to recover. The decision was thus one purely of fact, its only point of interest being MacKinnon, L.J.'s short historical survey of the rise of the doctrine of the implied term in contracts. The Lord Justice showed no reluctance in accepting the implied term laid down in *Trollope & Sons* v. *Martyn Brothers*, *supra*, and pointed out that such a term appeared to have been recognised, at least tacitly, so far back as 1856 in *Prickett* v. *Badger*, 1 C.B. (N.S.) 296.

The implied term, as such, has not had an easy way into recognition. Singleton, J., on the other hand, hinted that the particular implied term under discussion had had perhaps too easy a way. We can but await with interest the day when, perhaps, the question will be tested in the House of Lords.

As a postscript, it may be added that in *Hodges* (*G. T.*) *and Sons* v. *Hackbridge Park Residential Hotel, Ltd.* (1939), 83 SOL. J. 941, it was held that an estate agent could not claim commission from a vendor when the purchaser whom he had introduced turned out to be the representative of a government department and proceeded to acquire the property compulsorily under statutory powers at less than the vendor's price. Clauson, L.J., in that case described the agent as having done no more than to start a train of causes which ultimately led to the taking away from the vendor of his property at a price lower than any which he had ever thought of accepting.

UNITED LAW CLERKS' SOCIETY.

An invitation to serve the society as one of its trustees has been given to Master W. F. S. Hawkins, of the Chancery Division, Royal Courts of Justice, and has been accepted. This election fills the vacancy occasioned by the death of Mr. Harvey Forshaw Plant. The other trustees of the society are The Hon. Mr. Justice Morton and Mr. Anthony F. I. Pickford, the City Solicitor.

Company Law and Practice.

Statutory Requirements with regard to Accounts and Balance Sheets.—II.

LAST week I began to consider the various matters which the 1929 Act requires to be contained in the balance sheet and mentioned the requirements of s. 124 in this respect. Those requirements are of general application, but there are also particular items which must be specified where they happen to exist: the provisions of the Act relating to these items are to be found scattered in various sections, but I believe the following enumeration is complete.

(*a*) Where a company has paid any sums by way of commission in respect of shares or debentures or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much as has not been written off, must be stated in the balance sheet until the whole amount has been written off (s. 44).

(*b*) Section 45, it will be remembered, prohibits the provision by a company of financial assistance for the purchase of its own shares, but there are exempted from this prohibition, *inter alia*, the provision of money for the purchase by trustees of shares to be held for the benefit of the company's employees and the making of loans to *bona fide* employees to enable them to purchase shares. The aggregate amount of any outstanding loans made for these purposes must be shown as a separate item in the balance sheet.

(*c*) Section 46 (2) requires every balance sheet of a company which has issued redeemable preference shares to specify what part of the issued capital consists of such shares and the date on or before which they are liable to be redeemed.

(*d*) Where shares have been issued at a discount in accordance with the provisions of s. 47 the balance sheet must thereafter contain particulars of the discount allowed or so much of it as has not been written off at the date of the balance sheet.

(*e*) By virtue of s. 75 a company may in certain circumstances reissue debentures that have been redeemed, and where this power exists in the case of any company, particulars with respect to the debentures which can be so re-issued shall be included in every balance sheet.

(*f*) Where any of the assets of a company consist of shares in or amounts owing, whether on account of a loan or otherwise, from a subsidiary company or subsidiary companies, the aggregate amount of those assets, distinguishing shares and indebtedness, are to be set out in the parent company's balance sheet separately from its other assets. Correspondingly, if the parent company is indebted to a subsidiary or subsidiaries, the aggregate amount of the indebtedness is to be shown as a separate item on the liabilities side of its balance sheet (s. 125).

(*g*) Section 128 requires the accounts which are to be laid before the company in general meeting to contain certain particulars. The accounts referred to are the balance sheet and the profit and loss account, and, of the particulars specified, one, the remuneration of directors, would, as I mentioned last week, be normally shown in the profit and loss account. As regards the other particulars mentioned in the section, compliance with the requirements of the section would usually be effected by showing them in the balance sheet: they are (1) the amount of any loans made during the period to which the accounts relate either by the company or by any other person under a guarantee from or on security provided by the company to any director or officer, including any such loans repaid during the said period; (2) the amount of any such loans made before that period and still outstanding. This requirement does not apply in the case of a company whose ordinary business includes the lending of money, to a loan made in the ordinary course of business, nor to a loan not exceeding £2,000 made to an employee which is certified by the directors to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.

Somewhat curiously, s. 128 itself appears to contemplate that its provisions may not be observed, for it is provided by subs. (4) that if the requirements of the section are not complied with the auditors must include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

So much for the matters which the Act requires the balance sheet to contain. I come now to the reports and statements which must be attached to the balance sheet. These are three in number.

(1) *The directors' report.*—By s. 123 (2) there must be attached to the balance sheet a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to reserve.

(2) *The auditors' report.*—By s. 134 the auditors are required to make a report to the members on the accounts examined by them and on every balance sheet laid before the company in general meeting during their tenure of office, and the report is to state—(*a*) whether or not they have obtained all the information and explanations they have required; and (*b*) whether in their opinion the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company. By s. 129 the auditors' report is to be attached to the balance sheet and read before the company in general meeting, and is to be open to inspection by any member of the company. In practice, as my readers will know, the report follows the wording of (*a*) and (*b*) *supra*, and this is regarded as sufficient compliance with s. 134. It is to be observed, however, that the section requires a report not only on the balance sheet but also on the accounts examined by the auditors, and accounts here must mean something different from the balance sheet; and it may be suggested that on a strict construction the section requires something more than a report in the terms of (*a*) and (*b*), though it is true that the Act does not prescribe any other matters to be contained in the report, except in an appropriate case the particulars mentioned in s. 128 (4) to which I have referred above.

The requirement of s. 134 that the auditors are to make a report to the members is satisfied if the auditors forward their report to the secretary of the company (see *In re Allen, Craig & Co. (London), Ltd.* [1934] Ch. 483).

(3) *Statement of particulars as to subsidiary companies.*—By s. 126 where a company holds shares in one or more subsidiary companies there must be annexed to its balance sheet a statement signed by the directors who sign the balance sheet, stating how the profits and losses of the subsidiary company, or if there is more than one such company, the aggregate profits and losses have, so far as they concern the parent company, been dealt with in its accounts, and in particular how, and to what extent—

(*a*) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the parent company or of both, and

(*b*) losses of a subsidiary company have been taken into account by the directors of the parent company in arriving at the profits and losses of the parent company.

It is not, however, necessary to specify in the statement the actual amount of the profits or losses of any subsidiary, or the actual amount of any part of such profits or losses which has been dealt with in a particular manner.

"Subsidiary company" is defined in s. 127, and I do not propose to reproduce the definition here. Its profits or losses

mean, for the purposes of s. 126, the profits or losses shown in any accounts of the subsidiary made up to a date within the period to which the accounts of the parent company relate, or if there are no such accounts of the subsidiary available at the time when the parent company's accounts are made up, then the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

If the auditors' report on the subsidiary company's balance sheet is qualified, the statement annexed to the parent company's balance sheet must contain particulars of the qualification. If for any reason the parent company's directors are unable to obtain such information as is necessary for the preparation of the statement, the directors who sign the balance sheet must so report in writing and this report is to be annexed to the balance sheet instead of the statement.

Finally, s. 129 requires that every balance sheet must be signed on behalf of the board by two of the directors, or if there is only one director, by that director. The effect of the signing of the balance sheet has been considered in several cases, and it has been held, *inter alia*, that balance sheets which include fees due to directors and are signed pursuant to s. 129 are not acknowledgments of those fees within Lord Tenterden's Act, so as to take the case out of the Statute of Limitations (*In re The Coliseum (Barrow), Ltd.* [1930] 2 Ch. 44); and that balance sheets showing the amount of debts due to the company from directors and signed by those directors are not accounts stated involving a fresh promise to pay the debts (*John Shaw & Sons (Salford), Ltd.* v. *Shaw* [1935] 2 K.B. 113).

A Conveyancer's Diary.

Redemption of Mortgages.—I.

The House of Lords has recently given its decision in the important and very interesting case of *Knightsbridge Estate Trust* v. *Byrne*. While we are awaiting the first principal report of that case, it may be useful to consider some of the decisions which led up to it.

In *Kreglinger* v. *New Patagonia Meat and Cold Storage Co., Ltd.* [1914] A.C. 25, at p. 35, Viscount Haldane reviewed the history of the doctrines under which the courts have held various transactions incidental or collateral to mortgages to be void on the ground of their repugnancy to the nature of a mortgage. He pointed out that in 1179 it was laid down by the Council of Lateran that usury generally was worthy of condemnation, and that "when a creditor has been paid his debt he should restore his pledge." Relying on this general moral principle, the Court of Equity early began to interfere *in personam* with mortgages, and to compel the creditor to treat the estate which was at law transferred to him as a mere security.

Accordingly, if the Court of Equity was satisfied on the evidence that the transaction was in substance a mortgage, it would not permit the creditor to turn it into something quite different by keeping the land absolutely after the expiration of the legal period for redemption. Such was the origin of the estate known to us as the equity of redemption.

Once that estate had been established it was only a short step to two other doctrines. The first was that known as the rule against "clogging" an equity of redemption. If equity were going to insist that a debtor who paid off the loan was to have his own again, it was clear that it must also secure that he had his own in the same state (the results of lapse of time only excepted) as that in which it was before the mortgage. Thus, a creditor is not allowed, under cover of a mortgage, to secure to himself collateral advantages which will endure once the debt and interest have been paid. In the leading case of *Noakes* v. *Rice* [1902] A.C. 24, the respondent was the lessee of a public-house under a term which had some twenty-six years to run. He borrowed money (to help him pay for purchasing the lease) from the appellants, who were brewers, and covenanted not merely to repay the principal and interest, but also that he would not during the continuance of the term, whether anything was owing under the mortgage or not, use or sell any beer except such as he should purchase of the appellants. In other words, having had a "free house" he purported in consideration of the loan to turn it into a "tied house." Whether such a "tie" would have been enforceable under *Tulk* v. *Moxhay*, if it had been created in consideration of an out-and-out payment, is a matter which raises interesting and difficult questions. My own opinion is that a "tie" without privity of estate or the possession of land by the covenantee sufficiently near to the burdened land to be benefited by the "tie" would on principle not be so enforceable. But there is some reason for thinking that special considerations have come, almost by inadvertence, to be applied to "ties." However, that is not the present point. The respondent was minded to pay off the loan, and sued for a declaration that if he did so the "tie" would cease to operate. No question of *Tulk* v. *Moxhay* could really arise, because the parties concerned were the original covenantor and original covenantee, while the doctrine of that case applies only to actions against assigns of a covenantor. But the doctrine of *Tulk* v. *Moxhay* was not really well understood even by 1902, and a good deal of confusion was caused by its being invoked.

The House of Lords made the declaration prayed on the ground that to uphold the covenant after the loan had been paid off would be to clog the equity of redemption. According to Lord Davey, the doctrine against clogs is really a corollary of the doctrine "Once a mortgage, always a mortgage, and nothing but a mortgage" (at p. 33).

The question whether a mortgage and a secondary transaction connected with it are a single mortgage transaction with a clog on the equity or are two independent and legitimate transactions may well be one of difficulty; it turns always on the individual facts and documents. Thus, shortly after *Noakes* v. *Rice* there came *Reeve* v. *Lisle* [1902] A.C. 461, which went the other way. There, the parties entered into a mortgage in 1896 under which, among other things, it was stipulated that, if the mortgagees elected to do so, they might within two years become partners in the mortgagor's business on terms of forgiving him the mortgage debt. The two years having elapsed without the debt having been paid and without the partnership having been entered into, the mortgagor charged some more property and the arrangement about the partnership was renewed for a further five years. The mortgagees elected to exercise their option to become partners, and the mortgagor refused to accept them, claiming that the whole arrangement was a clog on the equity and was therefore bad. The House of Lords refused to have anything to do with this argument. The position was summed up by Lord Lindley, who said: "The real transaction was not taking a mortgage security . . . The mortgagees were bargaining for a share in the partnership on certain terms" (at p. 465).

The court will always look at the substance of the transaction to see whether it is a true mortgage or something else. Unless the transaction is a true mortgage the doctrine of "clog" has no application. And in considering these matters the court will take into account the circumstances of the parties; it will be particularly influenced against applying the doctrine in cases where it turns out that the transaction was a commercial one between commercial concerns. Thus, the House of Lords refused to apply the doctrine in *De Beers Consolidated Mines* v. *British South Africa Co.* [1912] A.C. 52, and questioned whether the doctrine could ever be applied to the equity of redemption in cases of debentures secured by a floating charge.

This case was shortly followed by the *Kreglinger Case* referred to above. There, a firm of wool brokers agreed to lend to a company of meat preservers a sum of money. The

loan was in August, 1910, and was not to be called in for five years if interest were punctually paid, but the borrowers might pay it off on a month's notice at any time. The loan was secured by a floating charge. It was further provided that for five years the company was not to sell sheepskins to anyone but the lenders, provided the latter were prepared to pay as good a price as anyone else. In other words, the lenders secured, in addition to the covenant to pay principal and interest, a right of pre-emption for five years, whether or not the loan was still on foot. The loan was, in fact, paid off in two and a half years, and the borrowers sought to get out of the right of pre-emption. In this effort they failed in the House of Lords. The real substance of the decision of the House is to be found in the passage in the speech of Lord Parker (at p. 56), where he said that the position was changed by the repeal of the usury laws and that since such repeal no stipulation in a mortgage had been invalidated unless it was (1) unconscionable, or (2) in the nature of a penalty clogging the contractual right to redeem, or (3) in the nature of a condition repugnant to that right. And at p. 61 this very learned lord invited the House to hold that such was the rule of law. The transaction being perfectly fair and businesslike there was no reason why it should not be upheld. It fell within none of the three heads, which all the lords accepted.

The truth is that the whole question is quite different when the case is one between modern commercial concerns, who bargain with their eyes open and at arm's length and with the whole money market competing for the privilege of making loans, from the old cases where a landowner was borrowing money from a usurer in a narrow market. That being so, it would be wrong for the courts to allow what was originally a beneficial and conscientious rule to become rigid, so as to defeat and prevent ordinary and reasonable commercial transactions. As Lord Mersey said (at p. 46), the doctrine "seems to me to be like an unruly dog, which, if not securely chained to its own kennel, is prone to wander into places where it ought not to be. Its introduction into the present case would give effect to no equity and would defeat justice." In chaining the doctrine down to cases where there is unconscionable dealing or a fetter on the contractual right to redeem, the House did a like public service to that which it did in the *Nordenfelt Case*, where it held that contracts in restraint of trade were not necessarily invalid, and were not invalid at all unless unreasonable. Were that not so, the vendor of a business could not get the best price for it, for fear of being unable validly to contract not to compete with the purchaser; apart from the *Kreglinger Case*, there was a danger that an inflexible rule of equity might prevent a borrower from validly making reasonable businesslike terms for a loan.

Landlord and Tenant Notebook.

Surrender by Acceptance of New Tenant.

THE possible consequences when a landlord grants successive leases of the same property to different tenants, the latter grant commencing to run before the earlier one has determined but made with the assent of its grantee, was gone into very thoroughly by Chitty, J., in *Wallis* v. *Hands* [1893] 2 Ch. 73. I propose in this article briefly to trace the history of the problem and to inquire whether anything that has happened since *Wallis* v. *Hands* has affected the validity of the principle therein applied.

The above-mentioned decision examined and set at rest a conflict, real or apparent, which began with *Thomas* v. *Cook* (1818), 2 B. Al. 119 and *Lyon* v. *Reed*, 13 M. & W. 285. The former was a fairly simple case. The plaintiff originally let premises to the defendant on a yearly tenancy, and the defendant sublet them to one P; at a time when both rents were owing, the defendant distrained and the plaintiff told P to pay his rent to him. P offered the defendant a bill, which he refused; the plaintiff took it and said he would have nothing more to do with the defendant. But he now sought to recover rent from the defendant and in answer to the plea that there had been a surrender by operation of law set up s. 3 of the Statute of Frauds. The jury found there had been a surrender, and the verdict was upheld by Abbott, C.J., Bayley, J., and Holroyd, J. What matters for present purposes is that neither of the judges expressly referred to any change of possession.

The facts of *Lyon* v. *Reed* were rather more complicated. In 1803 the Dean of St. Paul's demised premises to O and P, who were trustees, the lease to run till 1843. In 1808 O and P sub-demised to R. In 1811 O and P assigned the lease to B and P, new trustees. In 1812 the Dean of St. Paul's granted a new lease to O and P, expiring 1851, the change having in fact escaped his notice. The mistake having been discovered, B and P surrendered their lease to the Dean, who made a new grant to the proper trustees from whom the plaintiff in the action derived his title. The defendant was the executor of the grantee of the underlease R, and the claim was for nineteen years' arrears of rent. Now O and P, of course, had had no objection to the making of the later grant, but they had not executed any instrument formally surrendering the lease to themselves. Parke, B., held that mere statements and even the delivery up of a lease—which could be otherwise explained—were not enough to effect a surrender by operation of law, which essentially depended on estoppel *in pais*.

The next important decision was *Davison* v. *Gent* (1857), 1 H. & N. 744, which at first sight reads as if it were another instance of ecclesiastical absentmindedness. In 1842 the Dean and Chapter of Durham granted a lease to S, to expire in 1856. Seven years later they let the same property to J W for a term of twenty-one years. J W underlet the premises in two lots, one lease to run till 1855 and the other till 1856, and when they expired the defendant in the action forcibly took possession. In 1856 there was surrender to and regrant by the head lessors by and to the executrix of J W, who shortly afterwards married; and her husband let the whole of the premises to D, who became his co-plaintiff in the action, brought for ejectment. Their titles depended on the answer to the question whether the lease to S had been surrendered. On the strength of *Thomas* v. *Cook*, the court held that it had, drawing the inference that the document had been handed back.

Such was the state of the authorities when *Walls* v. *Hands* came up for hearing. The dispute arose out of grants made by a mineowner who seems to have had almost a passion for granting leases. In 1884 he demised part of a mine to three lessees for forty-five years; in 1887 he let the whole mine to the plaintiff, with the oral consent of the 1884 lessees, for forty-two years; in 1889 he let it to one of his co-defendants who underlet it to another. So much for the conveyancing; but what became important was that the plaintiff never took possession of the mine.

He brought the action for a declaration that his lease was valid and subsisting, for compensation from the alleged under-tenant, and for damages for breach of covenant of quiet enjoyment from his landlord. The answers to the first two questions depended on whether or not the 1884 lease had been surrendered by operation of law. In other words, whether the making of the grant to himself with the verbal assent on the part of those whose term had not expired gave him the interest he claimed. Answering this question in the negative, Chitty, J., disposed of the apparent conflict of authority by pointing out that judgments supporting the contrary view were delivered in cases where there had been a change of possession and no question had been raised what would be the effect if there had been no such change. Apart

from authority, the gist of the judgment is to be found in the following passage: "To hold that mere oral assent to the new lease operates as a surrender in law would be a most dangerous doctrine: it would practically amount to a repeal of the Statute of Frauds, and let in all the mischief against which the statute intended to guard. . . . The foundation of the doctrine that the acceptance of a new lease by an existing tenant operates as a surrender in law is estoppel by act *in pais*, the law attributing the force of estoppel to certain acts of notoriety, such as livery of seisin, entry, acceptance of an estate, and the like; and the grant of a new lease to a stranger, with the tenant's assent, and change of possession preceding or following the lease, bring such a case within the scope of the same doctrine, which mere oral assent would not do."

The only reported decision in which the subject has since been touched upon is *Metcalfe* v. *Boyce* [1927] 1 K.B. 758. The defendant in that case, a police constable, originally occupied a cottage under a tenancy agreement. In 1912 the Watch Committee decided that the Chief Constable should be tenant of all such cottages. After that date demands for rent were addressed to the county authority instead of to the defendant, though payments were actually made by him as before; and rates were paid by the authority. When he retired the Chief Constable demanded and then sued for possession. To get round the Rent Act he had to show that the tenancy held by the defendant before 1912 had been either assigned or surrendered. It was held that despite the fact that there was no physical change of possession there was a surrender by operation of law. Salter, J., distinguished occupation from possession, holding that possession had been given up; MacKinnon, J., that the defendant, having benefited by the change, was estopped from denying a surrender or assignment.

From this it rather looks as if the possibilities were not yet exhausted. The "change of possession" in Chitty, J.'s, judgment in *Wallis* v. *Hands* must be read as including "possession in law," or else the issue must depend on who is suing and who being sued, and who is estopped. In the former case it may be important that since *Wallis* v. *Hands* was decided, the doctrine of *interesse termini* has been abolished by L.P.A., 1925, so that according to the reasoning of Salter, J., in *Metcalfe* v. *Boyce*, the necessary change of possession would now be considered to have been effected.

Meaning of "Rent" in s. 2 of the Housing Act, 1936.

I examined the then recent decision in *Rousou* v. *Photi* (*Gort Estates Co., Third Party*) [1940] 1 K.B. 299, in the "Notebook" for 27th January last (84 Sol. J. 55). It was held in that case that "rent" in s. 2 of the Housing Act, 1936, meant "net rent" so that the landlord of a London dwelling-house let at what amounted to £45 10s. a year inclusive of rates was, owing to the fact that if rates payable were deducted the amount would be less than £40, subject to the statutory obligation to keep the premises in all respects reasonably fit for human habitation. It was also held that the fact that the tenancy was a weekly and not a yearly one did not prevent the enactment from applying. The latter proposition has now commended itself to the Court of Appeal, whose decision is reported in *The Times* of 30th April; but the decision of the High Court has been reversed on the other issue, on the ground that there is no reason for dissecting the annual payment and attributing part of it to rates, and that the authority of *Sheffield Waterworks Co.* v. *Bennett* (1872), L.R. 7 Ex. 409; L.R. 8 Ex. 196, is distinguishable. In the article referred to, the "Notebook," while pointing out that the decision accorded with the objects which the Legislature must be taken to have at heart, observed that there were certain objections, both theoretical and practical, to the interpretation given.

Our County Court Letter.

THE QUALITY OF WHEAT.

In a recent case at Cambridge County Court (*Miln* v. *Hays*) the claim was for £8 5s. as the price of goods sold. The plaintiff's case was that, in 1937, he had supplied 5½ cwts. of Juliana wheat to the defendant's order. A note at the foot of the invoice stipulated that no warranty was given as to description, quality, productivity or any other matter in connection with the seed. In 1938 no complaints were received about Juliana wheat, and its germination was certified as 99 per cent. by the National Institute of Agricultural Botany. The seed had been sent from Chester on the 30th September, 1937, from bulk stock, and any defect in the crop should have been apparent in June, 1938. It was not until February, 1939, that the defendant complained of a mixture in the crop, which consisted of Juliana (white wheat), Rivett's (bearded) and Little Joss—a red wheat. The mixture must have taken place after delivery. This was denied by the defendant, whose case was that he did not see the note on the invoice. He had complained to the plaintiff's saleswoman at a tennis party in 1938, but apparently she did not forward the complaint. The wheat was sowed in November, 1937, and the drill was cleaned beforehand. The seed had arrived in three bags, which were not interfered with, and the cause of the mixture probably was that, when the Juliana was threshed at the plaintiff's mill, the drum had not been properly cleaned. The wheat was no good for seeding purposes, and it was sold to the granaries for milling. A loss of £30 had been incurred by the defendant, but, owing to a misunderstanding, no counter-claim had been made. The field in question had not been sown for wheat since 1933, and the crops in the meantime were: trefoil in 1936, barley in 1935 and sugar beet in 1934. His Honour Deputy Judge Farrant held that the plaintiff was responsible for the breach of warranty. Judgment was therefore given for the defendant with costs.

THE QUALITY OF A SAW BENCH.

In a recent case at Brecon County Court (*Timber Products Ltd.* v. *Stenner & Co., Ltd.*) the claim was for £60 as damages for breach of contract. The plaintiffs' case was that, in 1937, they had purchased from the defendants a saw bench for £170. Owing to the poor workmanship, inferior material used, and faulty packing in transit, several months elapsed, after the delivery of the saw bench, before it was put into proper working order. During this period the plaintiffs' output was only 130 cubic feet a week, instead of 300 as usual, owing to the faulty condition of the bench. Repairs had been done, at the plaintiffs' own expense, but much timber was spoiled, and it had been necessary to buy a second-hand saw at a cost of £9. The saw bench was not a complicated machine to assemble, and the defendants were not asked to send their own fitter. The foundations were level, and were prepared to some extent in accordance with a blue print supplied by the defendants. The defendants' case was that about 2,500 of their saw benches were in use. That supplied to the plaintiffs had left the works in good condition, and was so well packed as to preclude all possibility of damage in transit. Most purchasers asked the defendants to lay the foundation, but the plaintiffs had not done so. On receipt of complaints, the defendants had sent an engineer fitter to work for a week on the plaintiffs' saw bench. His opinion was that it had not been laid on a true foundation. His Honour Judge Samuel, K.C., held that the trouble was due to the foundation not having been laid in accordance with the defendants' blue print. Judgment was given for the defendants, with costs.

To-day and Yesterday.

Legal Calendar.

29 April.—"The xxix day of Aprell [1555] was cutte downe of the galows a man that was hangyd the xxvi day of Aprell, a pulter's servant that was one of them that dyd robb the Spaneard with-in Westmynster Abbey, and he hangyd in a gowne of tawny fryse and a dobelet of tawny taffata and a payre of fyne hose lynyd with sarsenet, and after bered undur the galows, rayllyng a-ganst the pope and the masse, and hangyd iiii days."

30 April.—On the 30th April, 1684, James Holloway, a citizen of Bristol, a clever, restless, excitable man engaged in the linen trade with the West Indies, was executed at Tyburn. He had been actively involved in a plot against Charles II and the Duke of York and had hoped to seize Bristol with 350 men. He behaved with great firmness on the scaffold and when the sheriffs pestered him with questions answered with "life and temper." He professed himself a member of the Church of England. His head and quarters were fixed on the gates of Bristol.

1 May.—On the 1st May, 1827, Lord Eldon delivered up the Great Seal to George IV, having held it for nearly a quarter of a century. He afterwards wrote that the King's consideration to him then was very kind. He added that he thanked God for enabling him "to look back to a period of nearly half a century spent in professional and judicial situations and stations, with a conviction that the remembrance of the past will gild the future years which His Providence may allow to me, not merely with content but with that satisfaction and comfort and with such happiness of which the world cannot deprive me."

2 May.—On the 2nd May, 1672, John Evelyn recorded: "My sonn John was specially admitted of the Middle Temple by Sir Fra. North, his Majesties Solicitor General . . . I pray God bless this beginning, my intention being that he should seriously apply himself to the study of the law." But young John did not practise any more than his father, who had joined the same Inn thirty-five years earlier. He became a younger brother of Trinity House, Chief Clerk of the Treasury and Commissioner of Revenue in Ireland. He died in 1699.

3 May.—On the 3rd May, 1681, Oliver Plunket, Archbishop of Armagh, was arraigned in the King's Bench on a charge of being concerned in the "Popish Plot."

4 May.—On the 4th May, 1838, "in the Court of Common Pleas, Guildhall, there were five causes set down for trial, but notice had been given that there would be no defence as to four of them. When the fifth and last came on the attorney for the defendant did not answer. The learned judge after remarking on the extraordinary fact that no attorney was present in any one cause told the jury that the plaintiff ought to recover £400 and as no one appeared to gainsay the claim they were bound to return a verdict for that amount. This having been done, the court broke up, after being occupied about twenty minutes."

5 May.—Michael Sampson was a forger and a hero. During a dreadful storm in the Irish Sea he greatly contributed to the saving of a ship with 200 passengers on board. On the 5th May, 1764, less than six months later, he stood in the dock at the Old Bailey to receive sentence of death. He was not yet twenty years old. He made a very elegant speech: "After having voluntarily pleaded guilty, I humbly wait to receive sentence of the law. Great as is my crime, His Majesty's mercy is greater, and if in my past conduct any circumstances may have happily happened by which I have (under God) been the means of saving any of His Majesty's subjects, I hope those circumstances will in some measure recommend me, a truly sincere penitent, to his royal mercy." He was reprieved.

The Week's Personality.

All historians are agreed that the end of Oliver Plunket, Archbishop of Armagh, was judicial murder. It is true that when he was first arraigned on a charge of treason on the 3rd May, 1681, he was allowed a month to bring fresh evidence from Ireland, where by rights he should have been tried. But bad roads, want of money and the impossibility of inducing the Irish Courts to part with the records, which would have established the previous convictions of the witnesses against him, rendered the respite useless. The accusation against him was part of the notorious fiction of the "Popish Plot." In fact, since 1670, he had lived modestly in a thatched cottage in his diocese, the revenue of which was only £62 in good years, and sometimes fell to £6. Often he had lived on oatcake and milk. After his trial the Earl of Essex, the Viceroy of Ireland, assured the King of his innocence, but the savage state of popular alarm made it impossible to save him. Essex always described him as a "wise and sober man in due submission to the government without engaging into intrigues of state." On appointing him to his see, Pope Clement IX had spoken of him as "a man of approved virtue, consummate doctrine and long experience, conspicuous for his qualifications in the full light of Rome." He was only fifty-two when he was executed.

Find the Breach.

In the course of a recent correspondence relating to the leading case of *Bardell* v. *Pickwick*, in the *Sunday Times*, it was pointed out, so far as I know for the first time, that Serjeant Buzfuz for the plaintiff never attempted to prove that the defendant had refused to carry out his alleged promise to marry his client—an odd lapse from accuracy where every other detail is so meticulously correct. Mr. Justice Byles, while at the Bar, once won a case by an ingenious application of that very point. His client had promised to marry the plaintiff, but had married someone else. In cross-examination he asked two questions: "Did he not propose to marry you when his father was dead?" "Yes." "Is his father dead?" "No." "That is my case, my lord," said Byles. "But," objected the judge, "he has married somebody else!" "Well, my lord," was the reply, "his wife may die before his father and he may outlive them both when it will be time to fulfil the promise." The action was dismissed.

Original Documents.

Another reader of the *Sunday Times* cast doubt on the conjecture that the trial scene in "Pickwick" was a caricature of the great case of *Norton* v. *Melbourne* in 1836, when Queen Victoria's most entertaining Prime Minister was unsuccessfully sued for *crim. con.* by The Honourable George Norton, husband of the brilliant and delightful Caroline Norton, Sheridan's granddaughter. The evidence for the plaintiff was extremely thin and the notes with which he sought to support his case farcically unconvincing. "I will call about ½ past 4 or 5 o'clock. Yours, Melbourne," ran one. Another was: "How are you? I shall not be able to call to-day, but probably shall to-morrow. Yours, etc., Melbourne." Dickens followed his originals very closely when he made one of Mr. Pickwick's incriminating letters run: "Dear Mrs. B, I shall not be at home till to-morrow. Slow coach. Don't trouble yourself about the warming pan." Sir William Follett in his opening, discussing the notes on which he relied, took a line very like that of Buzfuz: "They seem to import much more than the words convey. They are written cautiously. I admit there is no profession of love in them. They are not love-letters, but they are not written in the ordinary style of correspondence." No satirist could have resisted the material thus put before him.

Reviews.

Paterson's Licensing Acts with Forms. By E. J. HAYWARD, O.B.E., Clerk to the Justices for the City of Cardiff, and C. R. RAYMOND-BOND, Clerk to the Justices for the Gore (Middlesex) Petty Sessional Division, solicitors of the Supreme Court. Fiftieth Edition, 1940. Crown 8vo. pp. cxxx, 1486 and (with Index) 177. London: Butterworth and Co. (Publishers), Ltd. Price 22s. 6d. net.

The completeness and ease of reference achieved by Paterson's "Licensing Acts" has long been, as it were, an annual miracle, and in 1940, after a period of fifty years' useful service, the work is an indispensable institution. Its subject covers a far wider field than drinking restrictions, taking in a hotchpot of regulations for a variety of activities, ranging from billiards to the cinematograph. An addendum to the present edition sets out the relevant war legislation, including the Shops Regulations, 1939, and the Public Entertainments (Restrictions) Orders, together with two Home Office circulars. Among the recent leading cases incorporated in the text is *R.* v. *Weston-super-Mare Licensing Justices* [1939] 1 K.B. 700; 83 SOL. J. 73, dealing with alterations to licensed premises. The two solicitors who are now the joint editors have sustained the reputation of their predecessors' work. One small blemish in point of form is that here and there the normal order of the references of cases is disturbed, as in *Milne* v. *Commissioner of Police for the City of London*, at p. 732, where [1940] A.C. 1 comes at the tail. Another point worth mentioning is that I could find no reference to the fact that where a restaurant licence is sought, the application should be for a full on-licence with a note, designed to avoid opposition, setting out the restrictive conditions which the Bench will be asked to impose.

Books Received.

The Law of Contract during and after War. By WILLIAM FINLAYSON TROTTER, M.A., LL.D., of Lincoln's Inn, Barrister-at-Law. Fourth Edition, 1940. Royal 8vo. pp. xli and (with Index) 727. London: Messrs. Butterworth and Co. (Publishers), Ltd. Price £2 12s. 6d. net.

The Fundamental Principles of a Balance Sheet. By WILLIAM WOLFF, A.C.A. 1940. pp. 24. London: Messrs. Gee & Co. (Publishers), Ltd. Price 1s. net.

Obituary.

MR. C. EASTWOOD.

Mr. Charles Eastwood, retired solicitor, formerly senior partner in the firm of Messrs. William Banks & Co., solicitors, of Preston, died on Thursday, 25th April, at the age of seventy-one. Mr. Eastwood was admitted a solicitor in 1898, and retired from practice four years ago. He was High Sheriff of Lancashire from 1938 to 1939.

MR. J. J. NELSON.

Mr. John James Nelson, solicitor, and senior partner in the firm of Messrs. Sherratt, Nelson & Mason, solicitors, of Alsager and Burslem, died on Friday, 19th April, at the age of seventy-five. Mr. Nelson was admitted a solicitor in 1887. He had been clerk to several local authorities, and had also been President of the North Staffordshire and District Law Society.

MR. H. L. SAXELBYE.

Mr. Harry Leicester Saxelbye, solicitor, of Messrs. England, Saxelbyes & Sharp, solicitors, of Hull, died on Saturday, 20th April, at the age of sixty-one. Mr. Saxelbye was admitted a solicitor in 1903.

Notes of Cases.

Court of Appeal.

John Jaques & Son, Ltd. *v.* **"Chess."**

Sir Wilfrid Greene, M.R., MacKinnon and Clauson, L.JJ. 19th March, 1940.

TRADE NAME—CHESSMEN—NAME—AMBIGUITY—ADVERTISEMENT FOR SALE—WORD "GENUINE" ADDED—PASSING OFF.

Appeal from Crossman, J. (83 SOL. J. 585).

Since 1849 the plaintiffs or their predecessors had made sets of chessmen of the "Staunton" design. Some game dealers and chess players at the present time regarded the name as indicating chessmen manufactured by the plaintiffs, while others regarded it as indicating chessmen of a particular pattern. In 1937 the defendants imported some chessmen and published an advertisement "Genuine Staunton Chessmen. Highest Quality. . . . We are prepared to stake our reputation that these sets are identical with those offered by the best dealers in the trade at prices 20 per cent. to 50 per cent. higher. . . ." The plaintiffs in this action sought to restrain the defendants from passing off sets of chessmen not of the plaintiffs' manufacture as and for the plaintiffs' chessmen. Crossman, J., held that the plaintiffs had not established that in the market of the chess-playing public the name "Staunton" denoted chessmen made by the plaintiffs and that they were not entitled to stop the defendants using that word alone in connection with chessmen. The word was ambiguous. It meant to a number of traders chessmen made by the plaintiffs but to chess players generally it meant chessmen of a particular design. In these circumstances the word "genuine" attached to the word "Staunton" was calculated to lead to the belief that the chessmen were made by the plaintiffs. The plaintiffs were entitled to stop the defendant describing their chessmen as "Genuine Staunton." The defendants appealed.

Sir WILFRID GREENE, M.R., in delivering the judgment of the court allowing the appeal, said: The decision in *Havana Cigar and Tobacco Factories, Ltd.* v. *Oddenino* [1924] 1 Ch. 179; 68 SOL. J. 164, was not analogous to the present case. If the respondents were unable to prove that the word "Staunton" by itself indicated commercial origin, having regard to the widespread use of the word as referring solely to design, it was difficult to see how the addition of the word "genuine" could import a reference to a particular manufacture. It would seem rather to emphasise the correctness of the design. This difficulty would be surmounted if there was sufficient evidence to show that the addition of the word "genuine" did refer to the respondents' manufacture. The respondents' main case was that the use of the word "Staunton" was by itself calculated to deceive. They called no evidence to show that if "Staunton" was not calculated to deceive the expression "Genuine Staunton" was. The court was unable to find any passage in the evidence which justified this conclusion. The appeal must therefore be allowed and the action dismissed.

COUNSEL: *J. Silverman*, for the appellants; *F. E. Bray*, K.C., and *J. Mould*, for the respondents.

SOLICITORS: *Sparks, Russell, Isard & Co.*, for *W. Ritson Morry*, Sutton Coldfield; *Radford, Frankland & Mercer.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

High Court—Chancery Division.

In re **Clayton; Collins** *v.* **Clayton and Reade.**

Morton, J. 12th March, 1940.

SOLICITORS—COSTS—ADMINISTRATION ACTION—SALE OF PART OF THE DECEASED'S ESTATE—PROCEEDS PAID INTO COURT—POWER TO MAKE CHARGING ORDER—EXTENT OF POWER—SOLICITORS ACT, 1932 (22 & 23 Geo. 5, c. 37), s. 69.

The intestate died in 1933 and in January, 1934, letters of administration were granted to his widow and one other

person. In 1935 a creditor started a creditor's administration action, the administrators being defendants. In October, 1935, an order for administration was made. In March, 1936, a property forming part of the estate, which was subject to a mortgage, was sold by the defendants pursuant to an order of the court. The balance of the purchase moneys, after discharging the mortgage, was lodged in court. There was a stop on this fund in favour of the Inland Revenue for income tax. The applicants on this summons were solicitors. They had acted throughout the administration proceedings for the defendants and they had also acted for the defendants on the sale of the property and had procured the consent of the mortgagees to the sale. By this summons they asked that, notwithstanding the Inland Revenue stop for income tax, it might be declared that the applicants were entitled to a charge upon the funds in court to the credit of the administration action, as being property recovered or preserved in the action through the applicants' instrumentality, for the amount of the applicants' costs, charges and expenses of or in reference to the action as the defendants' solicitors in the action down to and including the order to be made in this application, and that the amount of those taxed costs, charges and expenses might be raised and paid to the applicants out of the funds in court. The respondents to the summons were the Commissioners of Inland Revenue and the plaintiffs in the administration action. The Solicitors Act, 1932, s. 69, provides: "Any court in which a solicitor has been employed to prosecute or defend any suit, matter or proceeding may at any time declare the solicitor entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in reference to that suit, matter or proceeding, and may make such orders for the taxation of the said costs and for raising money to pay, or for paying the said costs out of the said property as they think fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a *bona fide* purchaser for value without notice, be void as against the solicitor. . . ." The "Annual Practice," 1940, p. 2371, contains the following note: "Charging Order for costs on Property 'recovered or preserved'—see Solicitors Act, 1932 (22 & 23 Geo. 5, c. 37), s. 69, . . . Extent of.—This statutory power given to the Court in aid of the common law right (see *In re Born* [1900] 2 Ch. 433), unlike the lien upon papers, is confined to the costs, charges and expenses incurred in respect of the particular property 'recovered or preserved' . . . ; it is not a general charge for all costs (*Bozon* v. *Bolland* (1839), 4 My. & C. 354; *Mackenzie* v. *Mackintosh* (1891), 64 L.T. 706; *Waterland* v. *Serle* [1897] W.N. 163) . . ." At the hearing the master made an order as asked in the summons, but limited the costs, charges and expenses to which the applicants were to be entitled to those of recovering or preserving the property. The applicants being dissatisfied, the summons was adjourned into court as a procedure summons.

MORTON, J., said the court had jurisdiction under s. 69 of the Act of 1932 to make the order for which the applicants asked. The note in the "Annual Practice," 1940, p. 2371, was not quite accurate. Counsel for the respondents had contended that, as a matter of principle, the order ought to be limited to the costs properly incurred in recovering and preserving the property (*Greer* v. *Young* (1883), 24 Ch. D. 545; *Emden* v. *Carte* (1881), 19 Ch. D. 311; *Turnbull* v. *Richardson* (1884), 1 T.L.R. 244; and *Scholey* v. *Peck* [1893] 1 Ch. 709). He proposed to make an order in accordance with that submission. The authorities, in which the court had made an order covering all the costs in the action, were distinguishable. In the present case the solicitors had only acted for the defendants. They were entitled to a charge for their costs on the fund in court to the extent to which those costs had been incurred in recovering and preserving that fund. There was no reason for departing from the general principle and giving to them a wider charge. The cases referred to in the note in the "Annual Practice," 1940, p. 2371, did not establish the broad statement for which they were cited. The learned judge limited the declaration to be made on the summons to the costs, charges and expenses properly incurred in recovering or preserving the fund in court. He did not give to the applicants' charge any priority over the stop action in favour of the Inland Revenue. The point was academic as the fund was sufficient to meet both charges. He further ordered that the amount of such taxed costs, charges and expenses should be raised and paid out of the fund in court.

COUNSEL: *George Solomon; J. H. Stamp; J. Bowyer.*

SOLICITORS: *Savage Cooper & Wright; Solicitor of Inland Revenue; Forsyte, Kerman & Phillips.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Cutcliffe's Will Trusts; Brewer *v.* Cutcliffe.

Morton, J. 13th March, 1940.

WILL—SETTLEMENT—SALE OF SETTLED LAND—CAPITAL MONEY INVESTED IN DEBENTURE STOCK—PARTIAL INTESTACY—DEVOLUTION OF CAPITAL MONEYS—SETTLED LAND ACT, 1882 (45 & 46 Vict., c. 38), s. 22, subs. (5)—SETTLED LAND ACT, 1925 (15 Geo. 5, c. 18), s. 75, subs. (5).

The testatrix, who died in 1884, by her will devised her real estate to her trustees upon trust as to three fifth parts thereof for certain nieces for their respective lives with remainder over. She gave her residuary personal estate to her trustee upon the like trusts as were declared concerning the real estate. At some time prior to 1897 certain portions of the real estate were duly sold under the power conferred by the Settled Land Act, 1882, and part of the proceeds were invested in railway debenture stock. The survivor of her nieces died in 1916. It was conceded, as a result of a decision of Crossman, J., in 1936, on the construction of the residuary gift, that, in the events which had happened, the three fifths of the real estate settled on the nieces were, on the death of the survivor, undisposed of and that these three fifths had vested in the nephew of the testatrix as her heir, subject to the prior interests of the nieces. The nephew of the testatrix died intestate in 1897, domiciled in Ontario. He left surviving him no widow but seven children. According to English law his eldest son was his heir-at-law. Under the law of Ontario his estate was distributable equally between his seven children as his next-of-kin. This summons was taken out by the trustees of the will for the determination of the question whether, on the death of the survivor of her nieces in 1916, the three fifth parts in which they had life interests under the will of the testatrix of (*a*) the debenture stock, and (*b*) such part of the real estate as was retained, passed to the eldest son of the nephew of the testatrix, who was the heir-at-law both of the nephew and the testatrix, or to the nephew's next-of-kin. The Settled Land Act, 1882, s. 22, subs. (5), provides: "Capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and go to the same persons successively, in the same manner and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement." It was admitted in argument that the retained land passed to the nephew's heir.

MORTON, J., said: It was well established that whether property was a movable or an immovable was decided according to the *lex situs* (*In re Berchtold* [1923] 1 Ch. 192, 199; 67 SOL. J. 212). The debenture stock in question, being capital moneys held by the trustees of an English settlement, resident in England, of a settlement of land in England made by the will of an English testatrix, must be regarded as situate in

England for the purposes of that rule. In s. 22, subs. (5), of the Settled Land Act, 1925, the important words were: "Shall, for all purposes of . . . devolution, be considered as land." Considering the matter without reference to authority that subsection showed that the debenture stock must be treated as an immovable and the nephew's interest passed to his heir-at-law. It was, however, suggested that that conflicted with the observations of Russell, J., as he then was, in *In re Berchtold, supra*. In that case the learned judge held that the equitable doctrine of conversion did not operate to transform land held on trust for sale into a movable so as to make it devolve according to the *lex domicilii*. The present case was different. Here there was a statutory provision that the debenture stock should for all purposes of devolution be considered as land. That being so, Russell, J.'s decision did not compel him to treat the stock in question as a movable. Having regard to the provisions of s. 22, subs. (5), of the Act of 1882, he ought to regard the stock as an immovable governed by the law of England. The observations of Sir Wilfrid Greene, M.R., in *In re Cartwright*, [1939] Ch. 90, 104; (1938), 82 SOL. J. 930, on s. 75, subs. (5), of the Settled Land Act, 1925, which reproduced in substance s. 22, subs. (5), of the earlier Act, supported this view. There was no foundation for the suggestion that the nephew had elected during his life to make the stock devolve on his death as personalty. He accordingly held that, on the nephew's death, his heir-at-law became entitled to his three fifths of the debenture stock.

COUNSEL: *Rink; J. Bowyer; William Cook.*

SOLICITORS: *Vandercom, Stanton & Co.*, for *Brewer & Son*, Barnstaple.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Wicks' Marriage Settlement; The Public Trustee *v.* Wicks.

Farwell, J. 18th March, 1940.

LEGITIMATION—SETTLEMENT ON MARRIAGE OF PARENTS—"A CHILD OF THE MARRIAGE"—MEANING—RIGHT OF LEGITIMATED PERSON TO SHARE IN MARRIAGE SETTLEMENT FUND—LEGITIMACY ACT, 1926 (16 & 17 Geo. 5, c. 60), s. 1, subss. (1), (3), s. 3.

By a marriage settlement made in 1893 certain property was settled upon trust to pay the income thereof to the wife during her life and after her decease upon trust for "all or any one or more of the issue" of the husband and wife as the husband should by deed or will or codicil appoint, and subject to any such appointment upon trust "for such issue of the said marriage" on attaining twenty-one or marrying as therein provided. The wife died in 1937. There were three children of the marriage, one of whom attained twenty-one and was living at the date of this summons. There was also a fourth child, the second defendant, of the husband and wife who was born in 1892 before the marriage and who had become a legitimated person under the Legitimacy Act, 1926. In 1938 this summons was taken out by the Public Trustee for the determination *inter alia* of the question whether any and, if so, what child of the husband, who was born before the marriage of the husband and wife, was a permissible object of the power given by the settlement to the husband. An inquiry was directed *inter alia* as to whether there were any children of the marriage of the husband and wife. In July, 1939, the Master certified that there were four children of the marriage. A summons was taken out to vary the certificate by erasing therefrom the name of the second defendant as a child of the marriage and certifying in a separate paragraph that he was a child of the husband and wife and had become a legitimated person. In 1940 the husband executed a deed purporting to appoint the whole fund to the second defendant.

FARWELL, J., said it was correctly stated in "Farwell on Powers," 3rd ed., p. 310, that "The exercise of a power of appointment divests (either wholly or partially according to the terms of appointment) the estates limited in default of appointment and creates new estates and that, too, whether the property be real or personal." It was contended that as this power had been exercised after the coming into operation of the Legitimacy Act, 1926, a new estate was created in a person who, at the time of its creation, was a legitimate child of the parents and accordingly a person in whose favour the power could be validly exercised. The person in whom the new estate was created must, however, be himself an object of the power of appointment. The only objects of the power of appointment were the children or issue "of the marriage" of the husband and wife. The second defendant never was a child of the marriage at all. The Act made him a legitimate child of his parents but the Act did not provide that he should become a child of the marriage. Under s. 3 of the Act a legitimated person could only take under "any disposition coming into operation after the date of legitimation." The question was whether the exercise of the power could be treated as a disposition coming into operation after the date of legitimation; if it could be so treated, did it effect a valid appointment? Although the exercise of the power of appointment had created a new estate, the person in whose favour it was exercised was not an object of the power. The appointment was therefore bad.

COUNSEL: *H. Rose; Guest Mathews; Guthrie; Herbert Hart; Burgess.*

SOLICITORS: *Gerrish & Foster; Ronald L. Meech; Tarry, Sherlock & King; Leslie J. Griffin; Bird & Bird; Solicitor for the Official Receiver.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

King Features Syndicate, Inc. *v.* O. & M. Kleemann, Ltd.

Simonds, J. 20th March, 1940.

COPYRIGHT — SKETCHES OF A COMIC FIGURE — FIGURE REPRODUCED AS A TOY WITHOUT THE LEAVE OF THE OWNER OF THE COPYRIGHT—INFRINGEMENT OF COPYRIGHT—WHETHER SKETCH A "DESIGN"—NOT REGISTRABLE—COPYRIGHT ACT, 1911 (1 & 2 Geo. 5, c. 46), ss. 1, 22—PATENTS AND DESIGNS ACTS, 1907 to 1932.

The plaintiffs were the owners of the copyright in a series of drawings published in America and Canada and subsequently in this country depicting a grotesque and fictitious character known as "Popeye the Sailor." The publication of these sketches started in 1929 and had continued ever since. The plaintiffs had granted a number of licences to firms in this country to sell dolls and other fancy goods reproducing the figure of Popeye. The defendants, who were importers of toys, had applied for such a licence; but they refused the terms which were offered to them and proceeded to import from a Japanese firm a number of brooches, toys and dolls embodying the figure of Popeye. These they sold as "Popeye brooches," etc. In this action the plaintiffs sought an injunction to restrain the defendants from infringing their copyright by the reproduction and sale of brooches and toys reproducing Popeye and damages for the infringement and conversion. The defendants denied that they had infringed the plaintiffs' copyright. They contended that representations of Popeye were capable of being registered under the Patents and Designs Acts, 1907 to 1932, and therefore under s. 22, Copyright Act, 1911, they were not the subject of copyright. Section 22 of the Copyright Act, 1911, provides that "this Act shall not apply to designs capable of being registered under the Patents and Designs Act, 1907. . . ."

SIMONDS, J., said that the first question was whether, where the artistic work in which copyright was claimed was a two-dimentional work, the copyright could be infringed by a toy in three dimensions. Section 1 of the Copyright Act, 1911, which defines "copyright" as meaning the sole right to reproduce the work "in any material form whatever," laid at rest any doubts on this point (*Bradbury, Agnew & Co.* v.

Day (1916), 32 T.L.R. 349). Clauson, J., in *Burke* v. *Spicers Dress Designs* [1936] Ch. 400, had not suggested that there could be no infringement of a copyright in a sketch by reproduction of it in three dimensions. He had there held, on the evidence before him, that there had been no infringement in fact. The suggestion that, as the plaintiffs' dolls, etc., had been copied from similar articles made by the plaintiffs' licensees, there had been no infringement, was untenable. It was immaterial whether the infringing article was derived directly or indirectly from the plaintiffs' copyright (*Hanfstaengl* v. *Empire Palace* [1894] 3 Ch. 109, 116). It was clear that apart from any question under s. 22 of the Act of 1911, the defendants had infringed the plaintiffs' copyright in the Popeye drawings. The last question was whether the plaintiffs' sketches were " designs " within s. 22 and excepted from copyright as being capable of registration under the Patents and Designs Acts. Those Acts afforded protection not for an abstraction but for shapes, patterns and ornaments " applied to any article by any industrial process or means." If he held that the Popeye sketches were " designs " within s. 22 then all sketches were " designs." He had come to the conclusion that these sketches were not " designs " within the Patents and Designs Acts ; they were therefore protected by the Copyright Act, 1911. He accordingly granted an injunction.

COUNSEL : *Macgillivray*, K.C., and *Gahan ; Shelley*, K.C., and *Russell-Clarke*.

SOLICITORS : *Shaen, Roscoe, Massey & Co. ; Derick R. Martin & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

High Court—King's Bench Division.

Fenston *v.* Johnstone.

Wrottesley, J. 26th January, 1940.

REVENUE—INCOME TAX—PURCHASE OF LAND BY ASSESSEE FOR DEVELOPMENT—MONEY FOUND BY ANOTHER PERSON—AGREEMENT TO SHARE PROFITS AND LOSSES—PARTNERSHIP—ASSESSMENT ACCORDINGLY.

Appeal by case stated from a decision of Commissioners for the General Purposes of the Income Tax Acts.

The subject, Fenston, wished to buy certain land for development, but had not the necessary funds. One, Shaw, agreed to find the money, and on the 26th September, 1935, an agreement in the form of a letter was entered into between Fenston and Shaw, in pursuance of which Shaw on the 30th September bought the land. Before the date of the agreement Shaw and Fenston arranged for the erection of buildings on the land and for their demise to various persons when erected. Before the erection, however, an unsolicited offer for the land was received and accepted by Fenston and Shaw, and the sale was completed in May or June, 1936. Part of the price was received before the 5th April, 1936, and the balance on completion. The profits of the sale were divided equally between Fenston and Shaw. In respect of the amounts received by him Fenston was assessed for the years ending the 5th April, 1936 and 1937, in the sums of £1,785 and £3,878, respectively, under Sched. D to the Income Tax Act, 1918, and he appealed against the assessments to the General Commissioners, contending (1) that his share of the profits was not remuneration for services ; (2) that he had entered into a joint venture with Shaw, the profits of which were assessable, if at all, only under r. 10 of the Rules Applicable to Cases I and II of Sched. D ; and (3) that the letter of 26th September constituted joint ownership or a partnership. Reference was made to *Leeming* v. *Jones* [1930] 1 K.B. 279 ; (H.L.) [1930] A.C. 415 ; and *British Sugar Manufacturers* v. *Harris*, 82 SOL. J. 75 ; 21 T.C. 528. It was contended for the Crown (1) that Fenston's rights were governed by the letter, which expressly negatived a partnership ; (2) that he had been remunerated for services rendered ; and (3) that he was assessable in respect of that remuneration under Case VI of Sched. D. Reference was made *inter alia* to *Ryall* v. *Hoare* [1923] 2 K.B. 447 ; *Wilson* v. *Mannooch* (1938), 21 T.C. 178 ; 81 SOL. J. 529 ; and *Duke of Westminster* v. *Inland Revenue Commissioners* [1936] A.C. 1. The General Commissioners accepted the Crown's view, and Fenston now appealed. The letter of the 26th September provided, *inter alia*, that the two parties were to share profits or losses equally, and stated : " This arrangement herein set out shall not constitute any partnership between us."

WROTTESLEY, J., said that in his opinion the letter constituted a partnership. The facts found did not contradict that construction. The only evidence on which the Commissioners could have reached the conclusion which they did reach was the sentence in the letter providing that there should be no partnership. The facts preceding the letter did not make it unlikely that a partnership should be formed. Fenston's contribution was that he attended to the active part of the business, even incurring out-of-pocket expenses. Shaw's contribution was that he agreed to find the money. With regard to the provision for sharing of profits and losses, the law was set out in " Lindley on Partnership," 10th ed., at p. 44. The facts of the present case were very close to those in *Moore* v. *Davis* (1879), 11 Ch. D. 261, where there was a disclaimer that the agreement constituted a partnership, and a statement that it " only and solely related to the above estate." Hall, V.-C., intimated that had the disclaimer not been thus qualified he would have held that there was no partnership ; but that was necessarily an *obiter dictum*, and it lost much of its weight in the light of the judgment of the Master of the Rolls in *Weiner* v. *Harris*, 54 SOL. J. 81 ; [1910] 1 K.B. 285, and the speech of Lord Halsbury in *Adam* v. *Newbigging* (1888), 13 App. Cas. 308, at p. 315. The disclaimer in the present case might affect the rights of the parties *inter se*, but could not change the character of what was in essence a partnership. *Walker* v. *Hirsch* (1884), 27 Ch. D. 460, was a case where a provision for the sharing of profits and losses did not create a partnership, but none of the features determining that decision existed in the present case. The agreement in question there had been a very peculiar one. The assessment appealed from must therefore be discharged.

COUNSEL : *Donovan ; The Solicitor-General* (Sir Terence O'Connor, K.C.) and *Hills*.

SOLICITORS : *Kenneth Brown, Baker, Baker ; The Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Walsh *v.* Randall.

Wrottesley, J. 2nd February, 1940.

REVENUE—INCOME TAX—GIFT TO HOSPITAL—INCOME RECEIVED FROM ABROAD—ACCUMULATED SAVINGS IN INDIA INVESTED IN INDIAN STOCK—SALE OF STOCK IN INDIA—PROCEEDS REMITTED TO ENGLAND AS DEMAND ORDER IN FAVOUR OF HOSPITAL—WHETHER LIABLE TO INCOME TAX.

Appeal by case stated from a decision of Commissioners for the General Purposes of the Income Tax Acts.

The taxpayer, Walsh, who resided in the United Kingdom, was a sleeping partner in a firm carrying on business in India. Out of the accumulated income which he derived from drawings from that firm he purchased a quantity of Indian 3½ per cent. Government Paper. More than a year later he caused his bank in India to sell a part of his holding of that stock, the proceeds, amounting to £7,800, forming part of a gift of £10,000 which the taxpayer intended making to a hospital in England. Accordingly, in November, 1934, his bankers in India posted him a demand draft to London for £10,000 in favour of the hospital, and he passed it to the secretary of the hospital in December, 1934. In an assessment to income tax made on the taxpayer under Cases IV and V of Sched. D to the Income Tax Act, 1918, for the year ending the 5th April, 1936, the £7,800 was included as income

received in the United Kingdom. The taxpayer appealed to the General Commissioners, contending (1) that the £7,800 represented part of the proceeds of sale of an investment and was accordingly a remittance out of capital and not out of income; (2) that, as all he received in the United Kingdom was a demand draft in favour of the hospital, which he could only have negotiated for his own benefit by forging the endorsement, no part of the £7,800 was remitted to or received by him. The Crown contended (1) that the investment of the accumulated income in India before its remittance to the United Kingdom did not take it out of the charge to income tax imposed by r. 2 of Case V of Sched. D; and (2) that the remittance was made to the taxpayer and in any event a sum received in the United Kingdom from a remittance payable there. The Commissioners held that the gift was from income, whether or not capitalised in India, which had not borne tax on entering the United Kingdom, and that it was therefore liable to tax. The taxpayer appealed.

WROTTESLEY, J., said that the accumulated income which the appellant had invested was no doubt regarded by him as capital. It was invested savings and in that sense capital unless it could be said, for example, that a professional man's invested savings never were or became capital. To the Crown, however, the income of a person residing in the United Kingdom was always income until taxed. Under Sched. D it was provided that tax should be charged in respect of annual profits or gains accruing to any person residing in the United Kingdom from any kind of property whatever, whether situated in the United Kingdom or elsewhere. By r. 2 of the Rules applicable to Case V of Sched. D, tax in respect of income from possessions outside the United Kingdom was to be computed on the full amount of the actual sums annually received in the United Kingdom from remittances payable there. The £7,800 was made up of the stored income as yet untaxed of the appellant. It was argued for the appellant that this was not taxable income because it had been invested and turned into capital. Such an argument would have been a complete answer in *Scottish Provident Institution* v. *Allan* [1903] A.C. 129, and *Scottish Provident Institution* v. *Farmer* [1912] S.C. 452. The Lord President's judgment in the former case, at p. 418, showed how unlikely it was that that argument would have succeeded. If a man resided in the United Kingdom he could not, by investing his income abroad for the time being, change its character *vis-à-vis* the tax collector. The next question was whether the £7,800 was income to which the appellant was entitled when it was received here. *Timpson's Executors* v. *Yerbury*, [1936] 648, at p. 662; 80 SOL. J. 184, was decisive on the point, for it made clear that in computing tax sums paid to the hospital at the appellant's request had to be taken into account in ascertaining whether moneys brought into this country and so paid formed part of the appellant's income. Accordingly, the £7,800 having, as already held, been paid out of his income, the case was clear. It was not a receipt of the appellant's income which was in question but a payment out of the income to which he was entitled. *Carter* v. *Sharon* (1936), 80 SOL. J. 511; 20 T.C. 229, was of interest as showing that the appellant could, had he chosen, have alienated the money before it reached this country, and so avoided tax. The appeal must be dismissed.

COUNSEL: *Heyworth Talbot; The Attorney-General* (Sir Donald Somervell, K.C.), and *Hills.*

SOLICITORS: *Blount, Petre & Co.; The Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Attorney-General *v.* Oldham.

Wrottesley, J. 23rd February, 1940.

REVENUE—ESTATE DUTY—SHARES GIVEN WITHIN THREE YEARS BEFORE DONOR'S DEATH—COMPANY'S RESERVES CAPITALISED—FURTHER BONUS SHARES ACCORDINGLY ALLOTTED TO DONEE AS SHAREHOLDER—WHETHER FURTHER SHARES DUTIABLE—FINANCE ACT, 1894 (57 & 58 Vict. c. 30), ss. 1, 2, 22.

English information.

On the 26th January, 1934, less than three years before his death, one Tate transferred to the defendant Mrs. Oldham, his daughter, by way of gift, 25,000 ordinary shares of £1 each in Tate & Lyle, Ltd. At that date the capital of the company was £4,500,000, divided into 3,400,000 £1 ordinary shares and 1,100,000 6½ per cent. £1 preference shares, all of which had been issued. At the 30th September, 1934, the general reserve of the company amounted to £1,650,000. On the 9th May, 1935, the company in general meeting passed resolutions to the effect that the capital of the company should be increased to £6,200,000 by the creation of 1,700,000 new ordinary shares of £1 each, and that the sum of £1,360,000 standing to the credit of the general reserve should be capitalised and applied in paying up 1,360,000 of the new shares, and that those shares should be distributed among the holders of ordinary shares in the proportion of two of the new shares for every five of the existing shares. In pursuance of those resolutions the company allotted to the defendant 10,000 £1 ordinary shares credited as fully paid. The Inland Revenue Commissioners accordingly claimed that estate duty at the appropriate rate became payable on Tate's death under s. 38 (2) of the Customs and Inland Revenue Act, 1881 (as amended by s. 11 (1) of the Customs and Inland Revenue Act, 1889, and s. 59 (1) of the Finance (1909-10) Act, 1910, and s. 2 (1) (*c*) of the Finance Act, 1894), in respect equally of the 25,000 shares of the original gift and the 10,000 bonus shares later allotted to the defendant. The defendant, while admitting that duty was payable in respect of the 25,000 shares, denied that it was payable on the 10,000 shares subsequently allotted. The Attorney-General, as informant, accordingly prayed for a declaration as to the duty payable and that the defendant should be ordered to deliver the necessary account and to pay the duty due.

WROTTESLEY, J., having referred to the material statutory provisions, said that the question was whether the bonus shares were property taken under the disposition. They were not gathered in by the definition section, s. 22 of the Act of 1894, because they were neither the proceeds of sale of the shares nor an investment for the time being representing those proceeds. The Crown's case rested not on any literal reading of the relevant taxing statutes, but rather on consideration of the substance of the transaction, *Lethbridge* v. *Attorney-General* [1907] A.C. 19, at p. 26, being relied on. Referring to *Attorney-General* v. *Lord Montagu* [1904] A.C. 316, his lordship said that the present case was not one in which the question of right or wrong, of good or bad faith arose. The only reason why the court was now being invited to fill a gap in the Act of 1894, a burden which was really one of legislation rather than of construction, was that a subject would otherwise go to some extent untaxed in respect of a monetary advantage which came to her by reason of a gift from her father which was itself subject to tax. It was desirable that all subjects in the same circumstances should suffer the same tax, but before filling in such a gap it was necessary to remember what Rowlatt, J., said in *Cape Brandy Syndicate* v. *Inland Revenue Commissioners* [1921] 1 K.B. 64, at p. 71, and also the passage from the speech of Lord Tomlin in *Inland Revenue Commissioners* v. *Duke of Westminster* [1936] A.C. 1, at p. 19. If it could be said that the defendant had been given these bonus shares by her father, then equally it could be said that she had been given every dividend which had accrued to her in respect of the ordinary shares. That was not common sense. Another line of approach, though leading to the same goal, was through the authorities on the method of valuation intended by the Act of 1894. His lordship referred to *Lord Strathcona* v. *Inland Revenue* [1929] S.C. 800, approved by the Privy Council in *Attorney-General*

for Ontario v. *National Trust Co., Ltd.* [1931] A.C. 818, and to *In re Payne's Declaration* [1939] Ch. 865, and *In re Kuypers* [1925] Ch. 244, as either confirming or not differing from the view which he had formed, but said that he preferred to base his decision on a consideration of the Act and of the substance of the transaction. Had it been to the defendant's interest to make out that her father had given her the bonus shares, she could not have done so truthfully. The information must therefore be dismissed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.), and *Stamp; Roxburgh*, K.C., and *Heyworth Talbot.*

SOLICITORS: *Solicitor of Inland Revenue; Pennefather & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Re Hans Heinrich Wilhelm Fischer, deceased.

Hodson, J. 11th March, 1940.

PROBATE — ADMINISTRATION — DISCRETIONARY GRANT — DEATH OF ENEMY ALIEN IN ENGLAND INTESTATE—CERTAIN OF PERSONS ENTITLED RESIDENT IN ENEMY TERRITORY—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49), s. 162—ADMINISTRATION OF JUSTICE ACT, 1928 (18 & 19 Geo. 5, c. 26), s. 9.

This was a motion for a grant of administration under the Supreme Court of Judicature (Consolidation) Act, 1925, s. 162, as amended by the Administration of Justice Act, 1928, s. 9, in respect of the estate of Hans Heinrich Wilhelm Fischer, deceased. The deceased, who was a German national, died intestate on 3rd February, 1940, leaving a widow, four daughters, and one son, the persons entitled to share in his estate on distribution. Two of the daughters were minors. The estate, which was of the value of about £6,000 or £7,000, comprised, *inter alia*, a leasehold house at Nottingham. On intestacy a life and minority interests arose. The applicant was the son of the deceased, resident in England. Prior to the outbreak of the present war the deceased had applied to the Home Office for a certificate of naturalisation as a British subject, but, owing to the outbreak of war, the application could not be proceeded with. Shortly after the death of the deceased the Secretary of the Board of Trade was communicated with for instructions as to the administration of the deceased's estate, and a reply was received to the effect that, if . . . the deceased at the date of his death was resident in this country, there was no objection to his estate being administered in the usual way, provided that a return was made to the Custodian of Enemy Property of any part of the estate demised to, or held for the benefit of, the members of his family resident in enemy territory, and that no part of his estate or the proceeds thereof was transmitted to such members of his family without the necessary government authority. Counsel moved for a grant of administration of the estate to the applicant and to Essex Loftus Digby, a solicitor, without citing the widow to accept or refuse a grant.

HODSON, J., made a grant as prayed on an undertaking to comply with the directions contained in the communication from the Board of Trade.

COUNSEL: *Richard Ellis*, for the applicant.

SOLICITORS: *Gregory, Rowcliffe & Co.*, for *Wells & Hind*, Nottingham.

[Reported by J. F. COMPTON-MILLER, Barrister-at-Law.]

KING'S BENCH.

Request for payment out of Court under Order XXII Rule 2 of the Rules of the Supreme Court and Rule 44 (1) of the Supreme Court Funds Rules, 1927.

Whenever a Request (Form No. 36 or 37) is lodged at the Pay Office, there should also be lodged at the same time, in addition to the original Notice of Payment in (B.5), a copy of the Notice of Acceptance (B.15) required to be given to the defendant under Order XXII Rule 2.

W. DACK,
Chief Accountant,
Supreme Court Pay Office, W.C.2.

25th April, 1940.

War Legislation.

(*Supplementary List, in alphabetical order, to those published week by week in* THE SOLICITORS' JOURNAL, *from the 16th September*, 1939, *to the 27th April*, 1940.)

ROYAL ASSENT.

The following Bills received the Royal Assent on the 25th April:—

Agricultural Wages (Regulation) Amendment.
Societies (Miscellaneous Provisions).
Solicitors (Emergency Provisions).
Special Enactments (Extension of Time).

Progress of Bills.

House of Lords.

Evidence and Powers of Attorney Bill [H.L.].
Read Second Time. [30th April.
Solicitors Bill [H.L.].
Read First Time. [30th April.
War Charities Bill (H.L.).
Read First Time. [30th April.

House of Commons.

Agricultural Wages (Regulation) (Scotland) Bill [H.C.].
Read Second Time. [17th April.
Finance Bill [H.C.].
Read First Time. [1st May.
Purchase Tax Bill [H.C.].
Read First Time. [1st May.
War Risks Insurance Bill [H.C.].
Read First Time. [25th April.
Workmen's Compensation (Supplementary Allowances) Bill [H.C.].
Read Second Time. [30th April.

Statutory Rules and Orders.

No. 584. **Customs.** The Additional Import Duties (No. 4) Order, dated April 25. (Fresh Strawberries.)

No. 595. **Emergency Powers (Defence).** The Registration of Industrial Diamonds Order, dated April 22.

No. 606. Emergency Powers (Defence). The Dripping (Maximum Prices) Order, dated April 25.

No. 598. Emergency Powers (Defence). The Lighting (Restrictions) (Amendment) (Northern Ireland) Order, dated April 19.

No. 596. Emergency Powers (Defence). The Condensed Milk (Provisional Prices) Order, dated April 22.

No. 601. Emergency Powers (Defence). The Piece-Goods and Made-Up Goods (Cotton, Rayon and Linen) (No. 2) Order, dated April 23.

No. 594. Emergency Powers (Defence). Road Traffic—Trolley Vehicles. The Standing Passengers Order, dated April 16.

No. 605. Emergency Powers (Defence). The Growing Trees (Delegation of Functions) Order, dated April 23.

No. 602. **Midwife, England.** The Medical Practitioners (Fees) Regulations, dated April 22.

No. 567. **Trading with the Enemy.** (Specified Persons) (Amendment) (No. 4) Order, dated April 23.

No. 592. **Wheat** (Accounting Periods) No. 1 Order, dated April 19.

No. 593. Wheat (Ascertained Average Price) No. 1 Order, dated April 19.

Draft Statutory Rules and Orders.

Land Drainage. Grants (Postponement of Prescribed Date) Order, dated April 11.

Land Fertility. Scheme (Postponement of Prescribed Date) Order, dated April 11.

Non-Parliamentary Publications.

BOARD OF TRADE.

Limitation of Home Trade in Textiles. The Piece Goods and Made-Up Goods (Cotton, Rayon and Linen) Order (S.R. & O. 1940, No. 561). Explanatory Memoranda, dated April 23.

MINISTRY OF HEALTH.

Rating and Valuation Acts, 1925–40. Forms, 1939-40.
H. 38. Assessment Committee's Report of Proceedings for 1939–40.
H. 38A. Inset for H. 38.

STATIONERY OFFICE.

List of Emergency Acts and Statutory Rules and Orders. Supplement 17, dated April 24.

Copies of the above Acts, Bills, S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

Sir GILFRID CRAIG, who has been appointed High Sheriff of Middlesex for the current year, has been elected Chairman of the Middlesex County Council. Sir Gilfrid was admitted a solicitor in 1895.

Mr. WILLIAM JONES, deputy clerk of the peace and county council of Caernarvon, has been appointed clerk of the county council of Anglesey. Mr. Jones was admitted a solicitor in 1920.

Professional Announcements.

(2s. per line.)

For reasons of health, and upon medical advice, Mr. George C. Blagden, of Messrs. Coward, Chance & Co., solicitors, of 30 Mincing Lane, London, E.C.3, has decided to cease practising and has retired from the firm. The practice will be continued by the remaining partners.

Notes.

When two elderly men were summoned at Old Street Police Court recently, for removing refuse from dustbins without authority, says *The Times*, Mr. W. G. Jenkins, solicitor for the prosecution, said: "This offence is known as 'dustbin totting'." The Magistrate (Mr. Herbert Metcalfe) asked if anyone could tell him where the word "totting" came from. He had never heard the word before. It was not a North of England word; perhaps it was from a Dickens character. The assistant gaoler said it was a common word all over London. A totter was a person who collected old rags, etc.

SUMMER ASSIZES.

The following days and places have been fixed for holding the Summer Assizes, 1940:—

MIDLAND CIRCUIT (Croom-Johnson, J.).—Thursday, 16th May, at Aylesbury; Tuesday, 21st May, at Bedford; Friday, 24th May, at Northampton; Friday, 31st May, at Leicester; Monday, 10th June, at Oakham; Tuesday, 11th June, at Lincoln; Wednesday, 19th June, at Derby; Wednesday, 26th June, at Nottingham. (Humphreys, J.).—Wednesday, 3rd July, at Warwick. (Humphreys, Tucker, JJ.).—Monday, 8th July, at Birmingham.

NORTHERN CIRCUIT (Wrottesley, Oliver, JJ.).—Monday, 20th May, at Appleby; Wednesday, 22nd May, at Carlisle; Monday, 27th May, at Lancaster; Monday, 3rd June, at Liverpool; Monday, 1st July, at Manchester.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
May 6	Jones	Ritchie	Reader
,, 7	Ritchie	Blaker	Andrews
,, 8	Blaker	More	Jones
,, 9	More	Reader	Ritchie
,, 10	Reader	Andrews	Blaker

	GROUP A.		GROUP B.	
	MR. JUSTICE BENNETT	MR. JUSTICE SIMONDS.	MR. JUSTICE CROSSMAN.	MR. JUSTICE MORTON.
DATE.	Non-Witness.	Witness.	Non-Witness.	Witness.
	Mr.	Mr.	Mr.	Mr.
May 6	Blaker	Jones	Andrews	More
,, 7	More	Ritchie	Jones	Reader
,, 8	Reader	Blaker	Ritchie	Andrews
,, 9	Andrews	More	Blaker	Jones
,, 10	Jones	Reader	More	Ritchie

The WHITSUN VACATION will commence on Saturday, 11th May and terminate on Tuesday, 14th May, 1940, inclusive.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October, 1939) 2%. Next London Stock Exchange Settlement, Thursday, 9th May, 1940.

	Div. Months.	Middle Price 1 May 1940.	Flat Interest Yield.	‡ Approximate Yield with redemption
			£ s. d.	£ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	109½	3 13 1	3 5 2
Consols 2½%	JAJO	74½	3 7 1	—
War Loan 3% 1955–59	AO	100	3 0 0	3 0 0
War Loan 3½% 1952 or after	JD	100½xd	3 9 8	3 9 0
Funding 4% Loan 1960–90	MN	111½	3 11 9	3 4 2
Funding 3% Loan 1959–69	AO	98	3 1 3	3 2 1
Funding 2¾% Loan 1952–57	JD	97½	2 16 5	2 18 10
Funding 2½% Loan 1956–61	AO	91	2 14 11	3 1 9
Victory 4% Loan Av. life 21 years	MS	110½	3 12 7	3 6 3
Conversion 5% Loan 1944–64	MN	108⅝	4 12 1	2 7 0
Conversion 3½% Loan 1961 or after	AO	101¼	3 9 2	3 8 3
Conversion 3% Loan 1948–53	MS	101¼	2 19 3	2 16 3
Conversion 2½% Loan 1944–49	AO	98	2 11 0	2 15 1
National Defence Loan 3% 1954–58	JJ	101	2 19 5	2 18 4
Local Loans 3% Stock 1912 or after	JAJO	87	3 9 0	—
Bank Stock	AO	339	3 10 9	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	87½	3 8 7	—
India 4½% 1950–55	MN	110½	4 1 5	3 5 0
India 3½% 1931 or after	JAJO	95	3 13 8	—
India 3% 1948 or after	JAJO	82	3 13 2	—
Sudan 4½% 1939–73 Av. life 27 years	FA	109	4 2 7	3 19 0
Sudan 4% 1974 Red. in part after 1950	MN	105	3 16 2	3 8 11
Tanganyika 4% Guaranteed 1951–71	FA	107	3 14 9	3 4 8
Lon. Elec. T. F. Corpn. 2½% 1950–55	FA	91	2 14 11	3 4 7
COLONIAL SECURITIES				
*Australia (Commonw'th) 4% 1955–70	JJ	104½	3 16 7	3 12 1
Australia (Commonw'th) 3¼% 1964–74	JJ	91½	3 11 0	3 14 0
Australia (Commonw'th) 3% 1955–58	AO	89½	3 7 0	3 16 4
*Canada 4% 1953–58	MS	107½	3 14 5	3 5 8
New South Wales 3½% 1930–50	JJ	97½	3 11 10	3 16 5
New Zealand 3% 1945	AO	95½	3 2 10	4 0 2
Nigeria 4% 1963	AO	106	3 15 6	3 12 2
Queensland 3½% 1950–70	JJ	96½	3 12 6	3 13 10
*South Africa 3½% 1953–73	JD	99xd	3 10 8	3 11 1
Victoria 3½% 1929–49	AO	97½	3 11 10	3 16 5
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	84½	3 11 0	—
Croydon 3% 1940–60	AO	93½	3 4 2	3 9 1
Leeds 3¼% 1958–62	JJ	98	3 6 4	3 7 7
Liverpool 3¼% Redeemable by agreement with holders or by purchase	JAJO	96	3 12 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	83xd	3 12 3	—
*London County 3½% 1954–59	FA	102	3 8 8	3 6 4
Manchester 3% 1941 or after	FA	84	3 11 5	—
Manchester 3% 1958–63	AO	94	3 3 10	3 7 7
Metropolitan Consd. 2½% 1920–49	MJSD	96½xd	2 11 10	2 18 7
Met. Water Board 3% "A" 1963–2003	AO	86	3 9 9	3 11 1
Do. do. 3% "B" 1934–2003	MS	88	3 8 2	3 9 5
Do. do. 3% "E" 1953–73	JJ	92	3 5 3	3 8 2
Middlesex County Council 3% 1961–66	MS	94	3 3 10	3 7 0
*Middlesex County Council 4½% 1950–70	MN	108	4 3 4	3 10 9
Nottingham 3% Irredeemable	MN	83	3 12 3	—
Sheffield Corp. 3½% 1968	JJ	101	3 9 4	3 8 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	104½	3 16 7	—
Gt. Western Rly. 4½% Debenture	JJ	111	4 1 1	—
Gt. Western Rly. 5% Debenture	JJ	122½	4 1 8	—
Gt. Western Rly. 5% Rent Charge	FA	116	4 6 2	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	114	4 7 9	—
Gt. Western Rly. 5% Preference	MA	100½	4 19 6	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.